

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**VERSATA SOFTWARE, INC., F/K/A  
TRILOGY SOFTWARE, INC.; and  
VERSATA DEVELOPMENT GROUP,  
INC., F/K/A TRILOGY  
DEVELOPMENT GROUP, INC.  
Plaintiffs,**

**v.**

**XIMPLEWARE CORP.  
Defendant.**

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**CASE NO: 1:14-CV-00562**

**DEFENDANT XIMPLEWARE CORP.'S NOTICE OF REMOVAL**

1. Defendant XimpleWare Corp., a California corporation and the only remaining defendant in this lawsuit, hereby files this notice of removal on grounds of complete diversity.

*See* 28 U.S.C. §§ 1332(a), 1441, 1446.

2. This Court has jurisdiction over the subject matter of this cause because this a civil action in which the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states. *See* 28 U.S.C.A. § 1332(a).

3. Plaintiffs Versata Software Inc. and Versata Development Group Inc. filed Cause No. D-1-GN-13-004127 in the District Court for the 98th Judicial District of Travis County, Texas against Defendant XimpleWare Corp. and three other non-Texas corporations, Defendants Ameriprise Financial Inc., Ameriprise Financial Services Inc., and American Enterprise Investment Services Inc. (collectively "Ameriprise Defendants"). A copy of Plaintiffs' Original Petition is attached hereto as Exhibit A.

4. On April 24, 2014, prior to the filing of any answers or counterclaims, Plaintiffs nonsuited the Ameriprise Defendants with prejudice from the state-court proceeding. Copies

of Plaintiffs' Nontice [sic] of Nonsuit with Prejudice as to Ameriprise Financial, Inc., Ameriprise Financial Services, Inc. & American Enterprise Investment Services, Inc. and the order nonsuiting said defendants are attached hereto as Exhibits B and C. Thus, Plaintiffs and the XimpleWare are the only parties.

5. Removal is proper because there is a complete diversity of citizenship. None of these parties are Texas citizens. Plaintiffs are Delaware corporations.<sup>1</sup> As noted, XimpleWare is a California corporation.

6. Additionally, removal is proper because the amount in controversy exceeds \$75,000. Plaintiffs allege that Ameriprise disclosed proprietary information to XimpleWare, exposing them to suit and demands for "seven-figure" royalties. Pls.' Orig. Pet. ¶¶ 27-30. Plaintiffs bring a tortious interference claim and a statutory claim pursuant to the Texas Uniform Declaratory Judgment Act against XimpleWare and seek declaratory relief regarding Plaintiffs' obligations to indemnify Ameriprise in connection with the federal suits Plaintiffs and Ameriprise currently face in the Northern District of California. Pls.' Orig. Pet. ¶¶ 32-39, 44-49.

7. This notice of removal is timely served. Plaintiffs served XimpleWare on May 20, 2014 through the Secretary of State of the State of Texas and XimpleWare received Plaintiffs' Original Petition via certified mail on June 9, 2014. A copy of the Return is attached hereto as Exhibit D and a copy of the Electronic Return Receipt is attached hereto as Exhibit E; *see also* 28 U.S.C. § 1446.

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<sup>1</sup> Two of the three Ameriprise Defendants are Delaware corporations and the third is a Minnesota corporation. *See* Ex. A, Pls. Orig. Pet. ¶¶ 4-6.

Dated this 16th day of June, 2014.

Respectfully submitted,

**TAYLOR DUNHAM AND RODRIGUEZ LLP**  
301 Congress Avenue, Suite 1050  
Austin, Texas 78701  
(512) 473-2257 Telephone  
(512) 478-4409 Telecopier

By: /s/ David E. Dunham  
David E. Dunham  
State Bar No. 06227700  
Email: [ddunham@taylordunham.com](mailto:ddunham@taylordunham.com)  
Isabelle M. Antongiorgi  
State Bar No. 24059386  
Email: [ima@taylordunham.com](mailto:ima@taylordunham.com)  
**ATTORNEYS FOR XIMPLEWARE CORP.**

### **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing document was served on the attorney of record by delivering a true and correct copy via facsimile on this the 16th day of June, 2014, as follows:

**Via facsimile and electronic mail:**

Amir Alavi  
Email: [aalavi@azalaw.com](mailto:aalavi@azalaw.com)  
Steven J. Mitby  
Email: [smitby@azalaw.com](mailto:smitby@azalaw.com)  
Benjamin Foster  
Email: [bfoster@azalaw.com](mailto:bfoster@azalaw.com)

**AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI  
& MENSING, P.C.**  
1221 McKinney Street, Suite 3460  
Houston, Texas 77010  
713.655.1101 (phone)  
713.655.0062 (facsimile)

Travis Barton  
Email: [tcbarton@mcginnislaw.com](mailto:tcbarton@mcginnislaw.com)  
**MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.**  
600 Congress Avenue, Suite 2100  
Austin, Texas 787101  
512.495.6000 (phone)  
512.495.6093 (facsimile)

**COUNSEL FOR PLAINTIFFS VERSATA SOFTWARE, INC., F/K/A TRILOGY SOFTWARE, INC.;  
AND VERSATA DEVELOPMENT GROUP, INC., F/K/A TRILOGY DEVELOPMENT GROUP, INC.**

/s/ David E. Dunham  
David E. Dunham